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**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

IN THE MATTER OF:

Church Road TCE Site

Foster Wheeler Energy Corp.,
Respondent

Docket No. CERC-03-2005-0349DC

Proceeding Under Sections 106(a)
and 122(a) of the Comprehensive
Environmental Response, Compensa-
tion, and Liability Act of 1980,
as amended by the Superfund
Amendments and Reauthorization
Act of 1986, 42 U.S.C. §§ 9606(a)
and 9622(a)

**FIRST AMENDMENT TO
ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT
FOR REMOVAL RESPONSE ACTION**

Having determined the necessity for implementation of removal response activities at an area of real property located in and around Church Road, Sunset Gardens, Elbe Road and South Mountain Boulevard in Mountain Top, Pennsylvania, Wright Township, Luzerne Pennsylvania, the United States Environmental Protection Agency ("EPA") and Respondent Foster Wheeler Energy Corp. ("FWEC") entered into an Administrative Settlement Agreement and Order by Consent for Removal Response Action (EPA Docket No. CERC-03-2005-0349DC) ("Settlement Agreement" or "Agreement"), which became effective on August 29, 2005.

EPA has determined that certain modifications to the Settlement Agreement are necessary and appropriate. This Settlement Agreement is amended to add four residences to the list of designated "guardian" wells, to connect these four residences to the public water system, and to eliminate potential human and animal contact with groundwater impacted with TCE from a groundwater seep located on the southwest portion of the property located at 192 Church Road. Therefore, pursuant to Paragraph 18.2 of the Settlement Agreement, EPA and FWEC hereby mutually agree to the following:

I. MODIFICATIONS

1. Paragraph 2.1 is amended to add the following after the last sentence:

"This Settlement Agreement also eliminates potential human and animal contact with groundwater impacted with TCE from a groundwater seep located on the southwest portion of the property located at 192 Church Road ("Seep")."

2. Section III is amended to add the follow Paragraphs:

- 3.13 The Seep is groundwater that discharges onto the surface and is driven by artesian pressure. The water from the Seep is impacted by TCE.
- 3.14 Results of EPA sampling of the Seep showed a TCE concentration of 26 ppb in December 2004. Results of FWEC's sampling of the Seep has shown TCE concentrations ranging from 0.9 ppb to 81 ppb during the time period from April 2006 to August 2008.
- 3.15 On June 23, 2005, the Agency for Toxic Substances and Disease Registry issued a Record of Activity which reviewed analytical data to date for the Seep, and concluded that exposure to the Seep at the reported levels was not expected to cause human health effects. However, levels in the Seep are above the Safe Water Drinking Act Maximum Contaminant Level ("MCL") for TCE of 5 ppb.
- 3.16 Mitigation of exposure to the Seep is warranted per section 300.415(b)(2)(I) of the NCP, 40 C.F.R. § 300.415(b)(2)(I), as there is an "actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants."
- 3.17 Levels of TCE detected in the Seep described in Paragraph 3.14 violate the Safe Drinking Water Act's MCL of 5ppb for TCE. Eliminating possible exposure to the Seep is protective of human health.

3. Paragraph 8.3 is amended to include the following subparagraphs:

- (l) Cover the Seep to eliminate potential human and animal contact with groundwater impacted with TCE. The parties intend and expect that this will be accomplished by installing gravel in the structure surrounding the Seep to grade, such that the gravel will be level with the ground surface; if field conditions warrant, this may be accomplished by some other similar and/or comparable means, as approved by EPA.
- (m) With respect to the Seep, provide post-removal site control activities consistent with section 300.415(l) of the NCP, 40 C.F.R. § 300.415(l); and EPA's "Policy on Management of Post Removal Site Control," (OSWER Directive 9360.2-02 (December 3, 1989). Such activities shall include, but not be limited to, arrangements with the State or local governments for performance of actions that will ensure the integrity of the work performed at the Site pursuant to this Order through operation and maintenance and actions that will ensure continuous review of monitoring data. For purposes of this paragraph, "arrangements with State or local governments for the performance of actions" shall mean submitting, by agreement or otherwise, to enforceable requirements determined by the State or local government to meet the criteria set forth in this paragraph, and shall include public participation and comment as required by the State or local government and the NCP.

4. Attachment #2 of the Settlement Agreement is amended to include the following:

"Additional Homes to Receive Public Water Service

376 South Mountain Boulevard
381 South Mountain Boulevard
417 South Mountain Boulevard
295 Church Road

FWEC is not required to install and/or maintain carbon filter units for the Additional Homes to Receive Public Water Service."

5. The list of "guardian" wells in Attachment #4 of the Settlement Agreement is amended to remove the following address "452 South Mountain Boulevard" and amended to include the following two addresses:

381 South Mountain Boulevard
438 South Mountain Boulevard


II. LIMITATION OF MODIFICATION

Except as otherwise stated herein, nothing in this First Amendment to the Settlement Agreement shall alter or otherwise affect any term or condition of the Settlement Agreement.

III. EFFECTIVE DATE

As provided by Paragraph 18.2 of Section XVIII of the Settlement Agreement, this First Amendment to the Settlement Agreement shall be the date on which it is signed by EPA.

FOR EPA:




JAMES J. BURKE
Director, Hazardous Site Cleanup Division
U.S. Environmental Protection Agency
Region III

4/2/09

Date

FOR RESPONDENT FOSTER WHEELER ENERGY CORPORATION:

The undersigned hereby certifies that he or she is authorized to execute this Modification on behalf of the Respondent and bind Respondent to the terms and conditions herein:


[Signature]

3-19-09
Date

Please Type the Following:

Name: John Crider

Title: Vice President, Foster Wheeler Energy Corporation

Address: Perryville Corporate Park, Clinton, NJ 08809-4000

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ENVIRONMENTAL PROTECTION AGENCY
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Church Road TCE Site
Mountain Top, Luzerne County, PA

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Proceeding Under Sections 106(a) and 122(a)
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1980, as amended by the Superfund
Amendments and Reauthorization Act of
1986, 42 U.S.C.

§§ 9606(a) and 9622(a)

ESTABLISHMENT OF THE ADMINISTRATIVE RECORD

Pursuant to authority vested in the President of the United States under Section 113(k) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), 42 U.S.C. Section 9613(k); delegated to the Administrator of EPA by Executive Order No. 12580 [52 Fed. Reg. 2923 (January 29, 1987)]; and further delegated to the Regional Administrators by EPA Delegation No. 14-22 (September 13, 1987)], I hereby establish the attached documents as the Administrative Record supporting issuance of Amendment No. 1 to the Administrative Order corresponding to EPA Docket No. CERCLA-03-2005-0349DC.

Date

4/2/09

James J. Burke

James J. Burke
Director, Hazardous Site Cleanup Division
U.S. Environmental Protection Agency,
Region III